## STATE OF ILLINOIS ILLINOIS COMMERCE COMMISSION

Ameren Transmission Company of Illinois	}	
	}	
Petition for a Certificate of Public Convenience	}	
and Necessity, pursuant to Section 8-406.1 of	}	
the Illinois Public Utilities Act, and an Order	}	
pursuant to Section 8-503 of the Public Utilities	}	Case No.: 12-0598
Act, to Construct, Operate and Maintain a New	}	
High Voltage Electric Service Line and Related	}	
Facilities in the Counties of Adams, Brown, Cass,	}	
Champaign, Christian, Clark, Coles, Edgar,	}	
Fulton, Macon, Montgomery, Morgan, Moultrie,	}	
Pike, Sangamon, Schuyler, Scott, and Shelby,	}	
Illinois.	}	

# RESPONSE TO MOTION TO STRIKE PORTIONS OF CERTAIN INTERVENORS' DIRECT TESTIMONY

NOW COMES the Morgan, Sangamon, and Scott Counties Land Preservation Group (hereinafter referred to as "MSSCLPG"), by and through its attorneys, Edward D. McNamara, Jr. and Joseph H. O'Brien of McNamara & Evans, and for its Response to the Motion to Strike Portions of Certain Intervenors' Direct Testimony and for an Expedited Ruling (hereinafter referred to as "Motion") filed herein by Ameren Transmission Company of Illinois (hereinafter referred to as "ATXI") on April 17, 2013, states as follows:

- That the Motion, in part, relates to the Direct Testimony of Paul Bergschneider (Intervenor MSSCLPG Exhibit 1.0), a member of MSSCLPG.
- 2. This Response opposes the striking of any portion of the Direct Testimony of Paul Bergschneider.
- 3. That the Motion cites certain pages and lines of the Direct Testimony of Paul Bergschneider which ATXI seeks to strike. ATXI's citation, however, is problematic and confusing, specifically the following portion, to wit: "2:38-3:57-63." The undersigned is unable to

determine with any degree of certainty the significance of that citation but this Response will assume the intended range of cited lines was meant to be 2:38-3:63, allowing for the most liberal and all-inclusive portion of testimony.

4. The Motion, at p. 11, cites the Direct Testimony of Paul Bergschneider at p. 3:57-63, which provides as follows, to wit: "The land itself has been the focus of documentation by the Illinois State Archaeological Survey (Ken Farnsworth, Senior Research Editor). The proposed Alternate Route would be a clear disruption of archaeologically significant land. The land proposed for the Alternate Route is also affected by easements from the Panhandle Eastern Pipeline Company, LP. The Panhandle Eastern Pipeline Company, LP has both a natural gas pipeline and a 12,000 acre natural gas storage area that would be directly affected by the proposed Alternate Route." The Motion argues that Mr. Bergschneider purports to represent the interests of the Illinois State Archaeological Survey and Panhandle Eastern Pipeline Company, LP. The undersigned would respectfully submit that any reasonable reading of the above quoted testimony would not indicate that Mr. Bergschneider is purporting to represent the interests of either the Illinois State Archaeological Survey or Panhandle Eastern Pipeline Company, LP. Mr. Bergschneider is quite simply testifying as to facts within his knowledge, facts which he believes support the argument of MSSCLPG and Mr. Bergschneider individually. This particular reference is a very good example of why the instant Motion is premature and should not be granted at this time. ATXI has the right to call Mr. Bergschneider to testify under oath on cross-examination. ATXI can ask Mr. Bergschneider whether he is authorized to represent the Illinois State Archaeological Survey and/or Panhandle Eastern Pipeline Company, LP. The undersigned would submit that no representation is made that Mr. Bergschneider is representing either entity. However, if ATXI believes, under some stretch of the imagination, that some argument can be made that Mr. Bergschneider is attempting to represent either entity, the time and place for any questions in that regard would be at oral hearing herein.

- The Motion, at p. 12, alleges that Mr. Bergschneider offers testimony as a representative of the group (MSSCLPG). Mr. Bergschneider is a member of the group. He has met with the group and testifies as to the composition of the group, and the intent of the group herein. If this case is to proceed in an orderly manner, on an expedited basis, such testimony should not be stricken but should at hearing be questioned on cross-examination. In order to avoid any controversy, MSSCLPG would offer to make the various members of its group available at the oral hearing herein for cross-examination. ATXI could at that time ask the individual members of the group if they have read the testimony of Paul Bergschneider and, if asked the same questions, would provide the same answers. ATXI could ask if Mr. Bergschneider has authority as a spokesman for the group. In the alternative, the undersigned would ask to file additional testimony from each and every individual member of the group, setting forth the identical statements and facts as are provided in the testimony of Mr. Bergschneider.
- 6. In further response, some argument was made in the Motion that Mr. Bergschneider is practicing law without a license. Mr. Bergschneider and all other members of the group are represented by the undersigned counsel. No reasonable interpretation of Mr. Bergschneider's testimony would lead any reasonable person to believe that Mr. Bergschneider is attempting to practice law.

#### ARGUMENT

7. As the undersigned has argued before in this same case, this is a massive case involving the property rights of hundreds, if not thousands, of private landowners located in East-Central,

Central, and West-Central Illinois. Certain landowners have petitioned to intervene pro se. Other landowners have petitioned to intervene pursuant to petitions filed by attorneys. A review of the active service list in this matter will indicate that in excess of three dozen attorneys have filed appearances herein. It is respectfully submitted that the Motion would unduly complicate and make totally unmanageable what is already a very difficult case. If we are to follow the reasoning set forth by ATXI herein, each individual member of each individual group would file individual testimony herein. As is stated above, MSSCLPG has agreed to make its members available for cross-examination. As is stated above, the individual members would, on short notice, file testimony herein adopting the testimony of Paul Bergschneider, if appropriate. If ATXI indeed wants the individual members of all groups to file testimony and appear, the undersigned would respectfully suggest that the Case Management Order be amended allowing the members of each individual group on very short notice to file their testimony herein. This would eliminate any question as to hearsay. ATXI cites 83 Ill.Adm.Code 200.610(a) which provides in relevant part as follows, to wit: "In all proceedings subject to this Part, irrelevant, immaterial or unduly repetitious evidence shall be excluded." This is a case where the "unduly repetitious" language has special meaning. Does anyone want to review repetitious testimony, much less listen to the same? Paul Bergschneider will be subject to cross-examination. The Motion, at p. 11, ATXI states that the testimony of Mr. Bergschneider set forth at p. 3:57-63 purports to represent the interests of the Illinois State Archaeological Survey and Panhandle Eastern Pipeline Company, LP. The undersigned would submit that a fair reading of this testimony, even without cross-examination, would indicate that Mr. Bergschneider in no way purports to represent either of said entities. However, if ATXI has a bona fide question in this regard,

8.

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it can certainly ask Mr. Bergschneider on cross-examination. The undersigned would submit that the testimony of Mr. Bergschneider, as cited above, is simply a factor that Mr. Bergschneider had asked that the Commission consider, not that Mr. Bergschneider was representing either of the two entities.

- 10. The Motion, at p. 12, refers to certain lines of Mr. Bergschneider's testimony by which ATXI would argue that Mr. Bergschneider is purporting to represent the interests of, and to testify on behalf of, others.
  - a. At p. 1:22-2:24, Mr. Bergschneider is simply advising the Commission that MSSCLPG is represented by counsel and actively participating in the proceeding, and that he is presenting testimony as a representative of the group. This is an orderly way to proceed. It avoids unnecessarily repetitious testimony.
  - b. At p. 2:38-3:57, Mr. Bergschneider explains in a very general manner what MSSCLPG hopes to accomplish in this case and the reason why the group is opposing the proposed Alternate Route. This testimony once again eliminates unduly repetitious testimony.
  - c. At p. 4:85-5:95, Mr. Bergschneider presents language that can and will be adopted by all members of MSSCLPG if necessary. This is the most effective way to present this testimony without being unduly repetitious.
  - d. At p. 5:95-98, Mr. Bergschneider refers to a personal financial analysis that he himself performed. He makes this clear. He is not attempting to represent that every member of the group performed the analysis.
  - e. At p. 8:169-9:196, Mr. Bergschneider is merely identifying by name, physical address, and parcel number the other members of the group. Would ATXI seriously

want each and every member of the group to state their name, street address, and parcel number(s)? Does ATXI have any reason to believe that the statement of Mr. Bergschneider as to names, addresses, and parcel numbers is somehow incorrect? This would appear to be public information that could be verified if ATXI has any question whatsoever. This is merely summary information provided by Mr. Bergschneider. As stated above, the members of MSSCLPG are willing to present testimony as their names, addresses, and parcel numbers, if granted leave by this Commission. They will stand for cross-examination as to this information if requested by ATXI. This is all very ludicrous but seems to be the intended result of the objections made by ATXI to this testimony.

f. At p. 10:204-207, Mr. Bergschneider represents that MSSCLPG is a unified front.

Mr. Bergschneider states that any member of the group would attest to the Direct

Testimony and could substantially testify in the same material fashion. Does ATXI

seriously question the veracity of this statement?

#### **STANDING**

11. ATXI questions the standing of MSSCLPG. Please refer to MSSCLPG's Amended Petition to Intervene, filed herein on February 20, 2013 and granted on March 1, 2013, which individually names the various members in MSSCLPG. The standing of these various members to participate herein appears to be established by the Commission. The Commission notified parties along both the proposed Primary and Alternate routes of the filing of case herein. Likewise, other participants suggesting additional alternate routes identified such routes and provided lists of landowners along and upon their respective

- additional alternate routes. If for some reason ATXI believes that any member of MSSCLPG does not have standing, ATXI should question such standing through an appropriate motion. It should be noted that both MSSCLPG's original Petition to Intervene and Amended Petition to Intervene were granted without objection.
- 12. In People ex rel. Chicago Bar Ass'n et al. v. Tinkoff, 399 Ill. 282, the following headnotes clarify what constitutes the practice of law: "Where one appears in a court representing one of the parties to the litigation, counsels and advises with such party in reference to his rights in the suit, selects the kind of pleading and drafts it and assumes general control of the action in the court, he is engaged in the 'practice of law'" [1]. "The question as to what constitutes the 'practice of law' is not limited to practice in courts of record but may include the giving of advice, counseling, drafting of legal documents and the participation in transactions which are outside of the scope of the actual litigation of a cause in the courts" [2]. Paul Bergschneider is a witness on behalf of a group. The members of the group are, in the words of Mr. Bergschneider, a "unified front." Requiring each and every member of the group to parrot the testimony of Mr. Bergschneider would be contrary to the provisions of 83 Ill.Adm.Code 200.610(a) and would simply result in unduly repetitious testimony.

### CONCLUSION

- 13. The undersigned would offer to present Direct Testimony from each member of MSSCLPG, simply providing name, physical address, and affiliated parcel number(s), along with a statement attesting to the content of the testimony of Mr. Bergschneider.
- 14. The undersigned is responding to the Motion on very short notice. The Motion was filed on April 17, 2013. The attorney for the undersigned was engaged in a hearing at the offices of

the Illinois Commerce Commission in Springfield, IL, commencing on April 17, 2013 at 10 a.m. and terminating at about 6 p.m. ATXI was presented with the testimony which is the subject of its Motion on March 29, 2013. ATXI had twenty (20) days to analyze the testimony and prepare its Motion. The undersigned has been given two (2) days to respond thereto. The striking of the testimony, as requested by the Motion, would result in an injustice and would certainly not promote any goal of presenting the Commission with a full and complete record. If for some reason there exists any real question as to whether the members of MSSCLPG would present the same or similar testimony as did Mr. Bergschneider, please allow for the members to prepare and provide the same on short notice. In the alternative, it is suggested that Mr. Bergschneider will appear for cross-examination and, upon cross-examination, the Administrative Law Judges can afford the testimony of Mr. Bergschneider the appropriate weight.

Respectfully Requested,
Morgan, Sangamon, and Scott Counties
Land Preservation Group,
By and through its attorneys,

Edward D. McNamara, Jr.

Joseph H. O'Brien

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### **VERIFICATION**

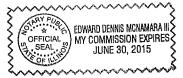
STATE OF ILLINOIS	}
	}SS
<b>COUNTY OF SANGAMON</b>	}

Edward D. McNamara, Jr., being first duly sworn, deposes and says that he is authorized to execute this Response to Motion to Strike Portions of Certain Intervenors' Direct Testimony; that he has read the above and foregoing document, has knowledge of the facts stated therein; and herewith states that the matters set forth therein are true in substance and in fact.

Subscribed and Sworn to before me this 19th day of April, 2013.

Edward D. McNamara, Jr.

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## **CERTIFICATE OF SERVICE**

Edward D. McNamara, Jr., an attorney, hereby certifies that he served copies of the foregoing Response to Motion to Strike Portions of Certain Intervenors' Direct Testimony on the individuals shown on the attached Service List, via electronic mail, on April 19, 2013.

Edward D. McNamara, Jr.

#### SERVICE LIST

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